

DOCUMENT RESUME

ED 310 550

EA 021 283

AUTHOR Edwards, Floyd H.
TITLE Tennessee's Student Drug Testing Law.
PUB DATE Aug 89
NOTE 12p.; Paper presented at the Annual Meeting of the National Council of Professors of Educational Administration (Tuscaloosa, AL, August 13-18, 1989).
PUB TYPE Speeches/Conference Papers (150) -- Reports - Descriptive (141)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Drug Use Testing; Due Process; *Educational Legislation; Elementary Secondary Education; Illegal Drug Use; *Policy Formation; School Law; Search and Seizure; State Legislation; *Student School Relationship
IDENTIFIERS *Tennessee

ABSTRACT

In 1988, the Tennessee Legislature passed permissive legislation (TCA 49-940) that allows school officials to test suspected students for using drugs. The law provides that testing is optional, with each local education agency deciding whether or not to adopt the policy. Twelve school systems chose to adopt the legislation as board policy. This paper explores precedents of the law and describes its basic provisions. Detailed standards upheld by the law include: (1) search standards; (2) individualized suspicion requirement; (3) collection of specimen procedures; (4) reasonableness scope requirement; and (5) reasonable suspicion requirement. The law further provides that only students under "particularized suspicion" may be tested. The law raises constitutional questions in regard to the legality of such a policy under the reasonable suspicion interpretation of the Fourth Amendment as well as the due process provisions of the Fourteenth Amendment. (7 references) (SI)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED310550

Tennessee's Student Drug Testing Law

Floyd H. Edwards
East Tennessee State University

Presented at
National Conference of Professors of
Educational Administration
Tuscaloosa, Alabama
August 14, 1989

Running head: STUDENT DRUG TESTING

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

☒ This document has been reproduced as
received from the person or organization
originating it.
☐ Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official
OERI position or policy.

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

*Floyd H.
Edwards*

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

EA 021283

TENNESSEE'S STUDENT DRUG TESTING LAW

Abstract

The 1988 Tennessee Legislature passed permissive legislation which allows school officials to test suspected students for using drugs. The law provides that testing is optional, with each Local Education Agency deciding whether or not to adopt the policy. The law further provides that only students under "particularized suspicion" may be tested. The law raises constitutional questions in regard to the legality of such a policy under the reasonable suspicion interpretation of the Fourth Amendment as well as the due process provisions of the Fourteenth Amendment. Participation by school systems is optional. Twelve school systems chose to adopt the legislation as board policy. This paper explores precedents of the law and describes its basic provisions.

Tennessee's Student Drug Testing Law
Introduction

The General Assembly further finds that the presence on school property of students with drugs in their bodies may pose a threat to the safety and well being of that student and other students, may be disruptive of school classes and other programs, and may interfere with the educational opportunities and progress of all students. (Tennessee Code Annotated) [T.C.A. 49-940, 1988].

With this statement of public policy, the Tennessee General Assembly amended the School Security Act of 1981, so as to authorize, but not require, the testing of students for drugs. "Drug" is defined to include not only controlled substances under the Drug Control Act but also alcohol.

T.L.O as a Precedent

Only the school principal may order the student to undergo a drug test, and then only if the principal has reasonable cause to believe that a particular student is under the influence of, or has used, drugs. This constitutional principle of law was enunciated by the U.S. Supreme Court in the case, (New Jersey v. T.L.O.,

1985). The T.L.O. case involved the search of a student's handbag for evidence of a violation of the school's no smoking rule while on school property. The search for tobacco revealed evidence of marijuana possession and possible sales to students. Parents of T.L.O. argued that such evidence was obtained by school officials in a serendipitous fashion and therefore not admissible to the case under the legal concept of the exclusionary rule. The Court held that students rights were protected from unreasonable searches by public officials under the Fourth Amendment to the U.S. Constitution. However, the Court also pointed out the necessity of balancing the school's need to maintain an orderly learning environment against the student's legitimate expectations of privacy. The Court expressly declined to hold that school officials were required to obtain a search warrant before searching students for evidence of an infraction. Thus, the Court stated that reasonable suspicion, a lower standard of due process than probable cause, was the appropriate standard to apply to student searches.

Search Standards Required

The T.L.O. case further enunciated two other standards for a "reasonable suspicion" search. First, the search must be justified in its inception. This means that there must be a reasonable basis for belief

that the student is violating, or has violated law or the rules of the school. Second, the search must be reasonable in its scope. This means that search procedures must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. (New Jersey v. T.L.O., 1985).

Individualized Suspicion Required

Tennessee law appears to address these provisions by requiring that the principal authorizing the drug testing of a student must not only have a reasonable suspicion but that suspicion must be particularized. Tennessee's drug testing law requires individualized suspicion and does not authorize the generalized testing of students.

Procedures for Collection of Specimen

Once suspicion has been focused on an individual student, precautions must be taken so as to not exceed the bounds of reasonableness under the circumstances. The U.S. Supreme Court, and other courts that have dealt with the issue, have determined that the collection and analysis of bodily specimens, is a search which deserves Fourth Amendment protections, (Skinner v. Railway Labor Executive's Association, 1989); Tennessee law implicitly authorizes the collection of both breath (for alcohol testing) and urine (for drug testing).

A federal district court in Arkansas, in addressing the procedures for the collection of a urine sample, has held that

requiring teenage students to disrobe from the waist while an adult school official, even though of the same sex, watches the student urinate in the "open" into a tube is an excessive intrusion upon the student's legitimate expectations of privacy under the circumstances present.
(Anabel v. Ford, 1985)

Tennessee law requires the test "be conducted in the presence of a witness ... designated by the policy of the local board of education." The word "test" here refers to the collection, not the analysis, of the specimen. At the very least, the witness should be of the same sex of the student, and some degree of privacy should be maintained for the student while the collection of the sample is made. (T.C.A. 940, 1988).

Reasonableness of Scope Required

The Anable Court held that urinalysis testing of students for marijuana use was unconstitutional because it exceeded the reasonable scope of the school-initiated search, even where there was individualized suspicion. A New Jersey court also struck down a urine drug screen

of all students as part of an annual medical examination where the avowed purpose was to provide the students with counseling and rehabilitative services. The Court was not convinced by the school system's motivation since a student who failed to comply with the mandated drug screen could be excluded from class and a student who tested positive could be suspended under other drug use policies. (Odenheim v. Carlstadt - East Rutherford Regional School District, 1985).

The Tennessee School Security Act of 1981 specifically mandates that the principal report to the police any student believed to be violating the Drug Control Act on school property (T.C.A. 49-6-4209). The emphasis of the new drug testing law (T.C.A. 49-6-42) is on treatment and rehabilitation. Of course, if drugs or drug paraphernalia are found in the possession of a student on school-property, this would constitute probable cause of a violation that the principal must report to law enforcement officials. But, if the student only tests positive for drugs and there is no other evidence, he may be guilty of use, but not necessarily of the manufacture, sale, delivery or possession on school property necessary to constitute a reportable violation. In other words, T.C.A. 49-6-4209 does not require a positive drug test to be reported to the police, in the absence of other proof of the student's violation of the Tennessee Drug Control Act.

The Concept of Reasonable Suspicion

Throughout case law on school searches the term "reasonable suspicion" has been accepted as the standard that school officials may utilize in conducting a search under the Fourth Amendment. This standard was confirmed in the T.L.O. case, as being less stringent than the "probable cause" standard applicable to a police search with a warrant. The "exclusionary rule", which applies in a "probable cause" criminal search does not apply to a "reasonable suspicion" school search.

Basis of a Search

What are some examples of reasonable inferences which may be drawn by school officials which justify a search on school property or at school related events? The National School Board's Association Council of School Board Attorneys has stated that

Specific reasonable inferences may be drawn from instances including, but not limited to, a tip from a reliable student, suspicious behavior which suggests that contraband is present, a smell indicating the presence of the contraband or a bulge in a pocket, etc. Reasonable cause should not be based on a mere hunch. (National School Board Association Council of School Attorneys) (1988).

Tennessee law specifies the details of this standard with respect to drug testing. The principal must have reasonable indications that a particular student may have used or be under the influence of drugs or have violated school policy. Such indications may result from

an authorized search of lockers or the student's person, pockets, purse or other containers;

observed or repeated use of drugs by the student on school property; or

reasonable information received from a teacher, staff member, or other student.

Further Provisions

The law further provides that a school official who maliciously orders a student to be tested for drugs or alcohol is subject to dismissal. Therefore, it is essential that the principal must reasonably believe that the drug test will yield evidence of the violation of school policy or will establish whether the student was impaired because of drug use or did not use drugs. Furthermore, the principal may order the test only if the purpose is to maintain order, discipline, safety,

supervision, and education of students in pursuit of the school's legitimate interests. Finally, (Sharpe, 1989) states that the principal may not order the test for the sole purpose of discovering evidence to be used in a criminal prosecution.

A section of the law provides that "tests shall be conducted by properly trained persons ... (T.C.A. 940, 1988). At this writing, the Tennessee Department of Education has not yet provided this training for personnel in the twelve school systems which have indicated an intention to test students for drug use. The State Board of Education has, however, developed a Model Drug Testing Policy to assist those school systems in implementing the provisions of the law. Whether or not the Tennessee law will withstand the Constitutional challenges which will inevitably come with its implementation, remains to be seen.

References

1. Anable v. Ford. 653 F. Supp. 22 (D.C. Ark., 1985).
2. National School Boards Association, Council of School Attorneys (1988), Fighting drugs in the schools: A legal manual. p. 72.
3. New Jersey v. T.L.O. 469 U.S. 325 (1985).
4. Odenheim v. Carstadt - East Rutherford Regional School District, 510 A. 2d. 709 (1985).
5. Sharpe, R. (1989) Drug testing of students: The legal implications. Unpublished manuscript.
6. Skinner v. Railway Labor Executives Association, 109 S.Ct. 1402 (1989).
7. Tennessee Code Annotated, Title 49, Chapter 6.